

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ROSE M. BALBICK,

Plaintiff,

Civil Action No. 08 CV 0902

v.

FINANCIAL RECOVERY CENTER, INC.

Defendant.

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**ANSWER AND AFFIRMATIVE DEFENSES**

Comes now, Financial Recovery Center, Inc., (hereinafter FRC) and files this answer and Affirmative Defenses to the Plaintiff's Complaint and states:

1. Denies.
2. Admits.
3. Admit that the Defendant transacts business in this district under 28 U.S.C. §1331(b),  
Denies that any conduct complained of occurred.
4. FRC is without information or knowledge sufficient to form a belief as to the truth of  
the allegation contained in paragraph 5 and therefore denies.
5. Admits.
6. Denies.
7. Denies.
8. Paragraph 8 does not contain any allegations which warrant a response and therefore  
is denied.
9. Admits.

10. Admits.
11. Admits.
12. Denies.
13. Denies in part and FRC does not have sufficient information or knowledge as to whether the Plaintiff and her husband were in the “midst of a marital separation at the time of the call” as alleged and therefore denies.
14. Denies in its entirety.
15. Denies that the defendant made any such allegations.
16. Denies.
17. Denies.
18. Denies.
19. Paragraph 8 does not contain any allegations which warrant a response and therefore is denied.
20. A. Denies B. Denies
21. Denies.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs Complaint fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Any violation of the law or damage suffered by the plaintiff was due to the affirmative action and /or omissions of Plaintiff or others, and does not give rise to any claim of damages against the Defendant.

**THIRD AFFIRMATIVE DEFENSE**

The Plaintiff has suffered no damage as a result of any acts or omissions of the Defendant.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant asserts, without admitting any liability whatsoever, that any violation of federal or state law was unintentional and the result of a bona fide error, notwithstanding reasonable procedures in place to prevent such errors.

**FIFTH AFFIRMATIVE DEFENSE**

Defendant asserts, without admitting any liability whatsoever, that Plaintiff's claims for emotional distress damages are barred by the impact rule as Plaintiff has failed to allege physical impact or injury.

WHEREFORE defendant respectfully requests an Order dismissing the case and awarding attorney's fees and costs.

/s/ Mark E. Lewis, Esq.

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